

REMARKS

1. Summary of the Office Action

In the office action mailed November 3, 2009, the Examiner: (i) rejected claims 44 and 45 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention; (ii) rejected claims 32-43 and 46 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,002,054 (Ash); and (ii) rejected claims 44 and 45 under 35 U.S.C. 103(a) as being unpatentable over Ash.

2. Status of the Claims

Pending are claims 32-46, of which claims 32, 33, 34, 36, 41, 43 are independent and the remainder are dependent. Applicant has amended claims 44 and 45 to clarify that that the diameter recited is an outer diameter.

3. Summary of Examiner Interview

Applicant thanks Examiner Anderson for the telephone interview conducted on July 29, 2009. Applicant agrees with the substance of the interview provided in the interview summary mailed August 4, 2009.

4. Response to Rejections under 35 U.S.C. § 112

As noted above, the Examiner rejected claims 44 and 45 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner noted that the diameter of the tube is not indicated as an inner or outer diameter. (Office Action, page 2.) Applicant has amended claims 44 and 45 to indicate that the diameter is an outer diameter. Accordingly, Applicant respectfully submits that the rejection of claims 44 and 45 under 35 U.S.C. § 112, second paragraph is moot.

5. Response to Rejections under 35 U.S.C. § 102

As noted above, the Examiner rejected claims 32-43 and 46 as being anticipated by Ash. Of these claims, claims 32, 33, 34, 36, 41, and 43 are independent.

These independent claims recite, in one form or another, a drainage device or system that includes drainage tubing having a generally closed distal end. In contrast, the Ash reference discloses an interstitial filtration and collection device that includes tubing that has an open distal end. The Examiner cited to Figure 1b of Ash for the teaching of a “generally closed distal end.” (Office Action, page 3.) However, a review of the teachings of Ash reveals that the tubing of Ash does not have a generally closed distal end. As explained in Ash, Figure 1b shows an embodiment that incorporates a filter configuration 11' formed on two elongate ultrafiltration fibers 16 having both their ends secured by adhesive inside the lumen of tubing section 13 so as to form a loop. (Ash, column 7, line 66 – column 8, line 3.) Figure 1b is reproduced below:

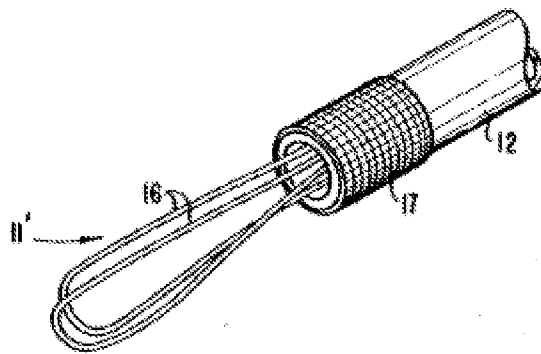


Fig.1b

Ultrafiltration fibers 16, however, comprise a plurality of filtration holes, as shown by Figure 1a, which is reproduced below.

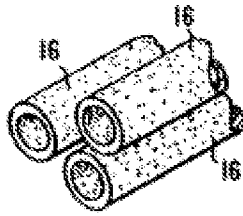


Fig. 1a

Accordingly, it is clear from the teachings of Ash and the Figures reproduced above that the tubing of Ash does not have a generally closed distal end. Because Ash discloses an interstitial filtration and collection device that does not have a generally closed distal end, Ash does not disclose the combination of elements recited by any of the independent claims. Accordingly, Applicant submits that Ash does not anticipate the independent claims. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 32, 33, 34, 36, 41, and 43 under 35 U.S.C. § 102, and allowance of claims 32, 33, 34, 36, 41, and 43.

In addition, Applicant notes that each independent claim, in one way or another, recites a system for efficient drainage of a body cavity, which may be, for example, the chest area in the region of the heart. Ash discloses an interstitial filtration and collection device. However, this disclosed system of Ash is not a system for efficient drainage of a body cavity. Rather, the system of Ash is designed as an implantable filtration and collection device that is useful for monitoring glucose and other physiological constituents. (See, e.g., Ash, column 10.) The system of Ash, however, would not act as an efficient drainage device in accordance with the claims. Accordingly, for at least this reason as well, Applicant submits that Ash does not anticipate the independent claims.

6. Response to Rejections under 35 U.S.C. § 103

As noted above, the Examiner rejected claims 44 and 45 as being unpatentable over Ash. Claims 44 and 45 depend from claim 36.

The Examiner stated that Ash discloses the claimed invention except for tube size and that it would have been an obvious matter of design choice to use a 13F tube, since such a modification would have involved a mere change in the size of a component. (Office Action, page 7.) As described above, Ash discloses an interstitial filtration and collection device that does not have a generally closed distal end. As such, Ash does not show or suggest the combination of elements recited by claims 44 and 45.

Accordingly, Applicant submits that claims 44 and 45 are not obvious in view of Ash for at least the reasons described above in reference to claim 36. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 44 and 45 under 35 U.S.C. § 103.

7. Dependent Claims

Remaining claims 35, 37-40, 42, and 46 are each dependent from one of the allowable independent claims. The Examiner rejected these dependent claims as being anticipated by Ash. Applicant submits that each of these dependent claims is allowable for at least the reason that they each depend from allowable independent claim. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 35, 37-40, 42, and 46 under 35 U.S.C. § 102.

Applicant nonetheless highlights at this time dependent claims 38 and 39, which are distinguishable over the cited art because the claims recite additional elements neither shown nor suggested by the cited art. Applicant addresses these claims as examples only, and other dependent claims include additional elements neither shown nor suggested by the cited art.

Regarding claim 38, Ash does not show or suggest a drainage device where an effective diameter is about 1mm. Similarly, regarding claim 39, Ash does not show or suggest a drainage device where an effective diameter is about 0.5mm.

The Examiner cites to column 7, lines 40-47 for the teaching that Ash discloses an effective diameter of about 1mm. However, Applicant notes that this section of Ash discloses that the pores of the interstitial filtration and collection device can have pore sizes of a maximum diameter of up to *100 microns*. As explained by Ash, the interstitial filtration and collection

device may be useful for monitoring and measuring the levels of cells such as lymphocytes, phagocytes, granulocytes, fibroblasts, proteins, hormones, and others residing in interstitial body spaces, and pores of such a size of 100 microns in diameter may be useful for cell collection. (See, e.g., Ash, column 10, lines 20-38.) As is known in the art, 100 microns is the equivalent of 0.1 mm. Accordingly, claim 38 recites a diameter that is about 10 times greater than the maximum diameter of Ash, and claim 39 recites a diameter that is about five times greater than the maximum diameter of Ash. Drainage tubing having a larger hole diameter, such as drainage tubing having hole diameters as specified in claims 38 and 39, allows for efficient draining of a body cavity.

8. Conclusion

For at least the reasons set forth above, Applicant submits that claims 32-46 are in condition for allowance and respectfully requests the Examiner to pass this application to issue. Should the Examiner wish to discuss this case with the undersigned, the Examiner is invited to call the undersigned at (312) 913-0001.

Respectfully submitted,

**McDONNELL BOEHNEN
HULBERT & BERGHOF LLP**

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By: /Scott M. Miller/
Scott M. Miller
Registration No. 62,967

Michael H. Baniak
Registration No. 30,608